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SUPREME COURT OF THE UNITED STATES

October Term, 1960

No. 14—No. 83

B. T. SHELTON, *et al.*, *Appellants*

v. No. 14

EVERETT TUCKER, JR., PRESIDENT, ETC., *et al.*, *Appellees*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS

MAX CARR, *et al.*, *Petitioners*

v. No. 83

R. A. YOUNG, *et al.*, *Respondents*

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF ARKANSAS

BRIEF FOR APPELLEES AND RESPONDENTS

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QUESTIONS PRESENTED

The questions presented by Appellants in No. 14 and by Petitioners in No. 83 are substantially identical. In each the issue is drawn on whether Act 10 is unconstitutional on its face by virtue of conflict with the Fourteenth Amendment to the Constitution of the United States. In No. 14 the rights secured by that Amendment suggested to be violated by the Act are academic freedom and freedom of association. In No. 83 both of these rights are mentioned and there is also suggested a deprivation of rights of speech, press and religion.

STATEMENT

The statements of appellants and petitioners are adequate to acquaint the Court with the factual background of the cases. However, we do not concede, nor does the competent evidence in the Record support, petitioners' statements that the purpose of calling the Second Extraordinary Session of the General Assembly of Arkansas in 1958 was that "of enacting anti-desegregation legislation." (Petitioners' Brief 6).

SUMMARY OF ARGUMENT

The motives of the Governor, Attorney General and members of the legislature in connection with the adoption of Act 10 are immaterial to any question before this Court. *Doyle* v. *Continental Ins. Co.*, 94 U.S. 535; *Barenblatt* v. *United States*, 360 U.S. 109.

The relevance of the information required by Act 10 to the determination of teacher fitness, suitability or trustworthiness is the point upon which issue is joined in this case. Both Congress and the legislatures of the States have a broad power to impose conditions upon public employment. *United Public Workers* v. *Mitchell*, 330 U.S. 75; *Garner* v. *Board of Public Works*, 341 U.S. 716. Relevance to fitness and suitability for the position held or sought marks the limits prescribed by this Court of the public employer's inquiry into the otherwise private affairs of its employees. *Gerende* v. *Board of Supervisors of Elections*, 341 U.S. 56; *Garner* v. *Board of Public Works*, *supra*.

The peculiar duties and responsibilities of a teacher make relevant a broader area of inquiry by the public employer than is the case with less sensitive avocations.

Adler v. *Board of Education*, 342 U.S. 485. Act 10, unlike the mandates in *Garner* and *Adler*, is not a disqualifying enactment and requires information relevant to promotion and reassignment decisions as well decisions on the fitness of an individual to teach at all.

Wieman v. *Updegraff*, 344 U.S. 183, and *Sweezy* v. *New Hampshire*, 354 U.S. 234, do not restrict the power of the State exercised by the adoption of Act 10, and there is no dispute in this case about the concept of constitutional protection for academic freedom as it was treated in those decisions. It is also clear that *Slochower* v. *Board of Education*, 350 U.S. 551, prescribes no inhibitions against relevant inquiry by the public employer.

There is no constitutional requirement that a teacher's classroom conduct be the sole basis for determining his fitness. A broad range of factors, including conduct away from the school house, is relevant in making this determination. *Beilan* v. *Board of Education*, 357 U.S. 399.

Any employee, public or private, owes the fundamental duty of candor and frankness to his employer with regard to his fitness for the position held or sought, and this is especially true in the case of a public school teacher. *Beilan* v. *Board of Education, supra; Lerner* v. *Casey*, 357 U.S. 468. This obligation is recognized by professional organizations of teachers as well as the courts. 42 A.A.U.P. 49, 96. A legislative requirement that the obligation be discharged is not inconsistent with the concept of due process as defined by this Court *Hebert* v. *Louisiana*, 272 U.S. 312; *Palko* v. *Connecticut*, 302 U.S. 319.

N.A.A.C.P. v. *Alabama*, 357 U.S. 449, and *Bates* v. *Little Rock*, 361 U.S. 516, hold only that the information there sought was not relevant to the asserted governmental purpose involved and thus are clearly distinguishable from the cases at bar. The contention that the purpose of Act 10 is purely one of exposure raises no material issue cognizable to this Court. *Barenblatt* v. *United States, supra.* Argument that Act 10 is capable of being unconstitutionally applied is, at best, premature in these proceedings. Nor can Act 115, adopted at a subsequent session of the legislature and four months thereafter declared unconstitutional by a court of competent jurisdiction, affect in any way the validity of Act 10 because Act 115 was wholly unrelated to Act 10 and is no longer in existence.

The questions of the wisdom or necessity of Act 10 are not properly addressed to this Court. *Lerner* v. *Casey, supra; United Public Workers* v. *Mitchell, supra; Atkin* v. *Kansas*, 191 U.S. 207.

The Act is valid on its face.

ARGUMENT

I

THE MOTIVES OF THE GOVERNOR AND OF THE LEGISLATURE IN CONNECTION WITH THE ADOPTION OF ACT 10 HAVE NO BEARING ON CONSIDERATIONS OF CONSTITUTIONALITY OF THE ACT

In an effort to condemn the Act in question with the "guilt by association" device, appellants and respondents have filled the Records in these cases with materials which could have no purpose but to make a purported demonstration of the motives or intentions of the Governor and the Legislature in their respective activities connected with the adoption of the Act. The address of the Governor to the General Assembly was introduced, over defense objections, in both cases. (No. 14 Pl. Ex. 1; R.55, 91—No. 83 Pl. Ex. 5; R.97, 114). The State Senator who introduced the bill was questioned as to its purpose (No. 83; R.104) as was the State Attorney General whose office had performed some of the work in drafting it. (No. 83; R.83). Petitioners pursue this inquiry into motives in the argument contained in their Brief asserting that the Act was adopted "by the Arkansas Legislature to achieve the over-all purpose of noncompliance with the decision in *Brown v. Board of Education*, 347 U.S. 483." The same assertion is made by appellants in their Brief where it is said that "The obvious aim of the statute under contest here was to attempt to close off the classroom from sentiment favoring school desegregation or opposition to the State's decision to defy the Constitution of the United States."

It has long been settled that in testing the constitutionality of an Act the courts cannot search for motive or intention. "If the Act done by the State is legal, is not in violation of the Constitution or laws of the United States, it is quite out of the power of any court to inquire what was the intention of those who enacted the law." *Doyle* v. *Continental Ins. Co.*, 94 U.S. 535. The futility of such an inquiry was pointed out in *Shuttlesworth* v. *Birmingham Board of Education*, 162 F. Supp. 372, affirmed 358 U.S. 101, where it was said that motives vary from one individual member of the Legislature to another, and that "As there is no one corporate mind of the legislature, there is in reality no single motive."

The principle has been reaffirmed by this Court as recently as *Barenblatt* v. *United States*, 360 U.S. 109, 132, in the following language:

> "So long as Congress acts in pursuance of its constitutional power, the Judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power. *Arizona* v. *California*, 283 U.S. 423, 455, 75 L. ed. 1154, 1165, 57 S. Ct. 522, and cases there cited. 'It is, of course, true,' as was said in *McCray* v. *United States*, 195 U.S. 27, 49 L. ed. 78, 24 S. Ct. 769, 1 Ann Cas 561, 'that if there be no authority in the judiciary to restrain a lawful exercise of power by another department of the government, where a wrong motive or purpose has impelled to the exertion of the power, that abuses of a power conferred may be temporarily effectual. The remedy for this, however, lies, not in the abuse by the judicial authority of its functions, but in the people, upon whom, after all, under our institutions, reliance must be placed for the correction of abuses committed in the exercise of a lawful power.'"

The irrelevance of the motives of the Governor, Attorney General and the members of the General Assembly to the questions before the Court appears to be so clearly settled by the prior decisions of this Court that we do not here attempt to answer or refute the factual assertions and arguments advanced in this area by appellants and petitioners. Our decision to so treat the matter is prompted solely by the desire to avoid undue extension of this brief discussing irrelevant matters. Certainly we entertain no apprehension that if the matters were relevant, and if a full and proper judicial inquiry were directed to them, the motives of all of these officers prompting their official acts would be consistent with the oaths taken by each to uphold the Constitution of the United States. As pointed out in *Shuttlesworth* v. *Birmingham Board of Education, supra*, public officials are entitled to this presumption.

II

ACT 10 IS A CONSTITUTIONAL EXERCISE OF POWER OF THE STATE LEGISLATURE TO PROVIDE FOR THE ADMINISTRATION OF THE PUBLIC SCHOOLS

The Act in question requires that as a condition precedent to employment in the public schools teachers and supervisory personnel shall file with the appropriate governing board an affidavit listing the associations and organizations to which they are or within the past five years have been members, and those to which they are, or during the same period have been, making regular contributions or paying dues. Furnishing the information only is required. There is no sanction contained in the Act that if membership in the Communist Party, or in any other named organization, is thus revealed dis-

missal and disqualification must follow. The Act, of course, provides a corollary duty to the furnishing of the information—it requires the governing board to obtain the information prior to entering into employment contracts.

It is charged that these requirements prescribed by the State in connection with the operation and administration of its public schools are unconstitutional on their face. It is not argued that the five-year retrospective effect of the Act contributes to the alleged invalidity. Indeed such a five-year period of inquiry into past activity by municipal employers was specifically approved by this Court in *Garner* v. *Board of Public Works*, 341 U.S. 716. The principal contention of both appellants and petitioners (aside from the matter of motives) is that the information required by the Act is not relevant to a determination of teacher fitness, suitability or trustworthiness. It is on this contention that issue can be joined.

While no one would contend that entry upon public employment constitutes an abdication of all constitutional rights, it is equally clear that there is necessarily a broad permissible area of legislative regulation with respect to employees who are paid from the public treasury. Thus it was held that there was no constitutional objection to a prohibition by Congress of partisan political activity on the part classified federal employees. *United Public Workers* v. *Mitchell*, 330 U.S. 75. It was pointed out in *Garner* v. *Board of Public Works*, *supra*, that the power of a state is not less than that of Congress in this field.

It was held that a state law requiring candidates for municipal office to file an affidavit disavowing activity directed toward overthrow of the government by force or violence, or knowing membership in an organization

engaged in such an attempt, was valid in *Gerende* v. *Board of Supervisors of Elections*, 341 U.S. 56. An ordinance of the City of Los Angeles requiring of its employees, as a condition to continued employment, an oath denying advocacy of overthrow of the government by unlawful means and an affidavit disclosing present or past membership in the Communist Party was sustained against a broad constitutional attack in *Garner* v. *Board of Public Works*, *supra*. While this is not the most recent treatment by this Court of questions similar to those presented by the cases at bar, it does furnish a clear definition of the permissible area of inquiry of public employers. It is said:

> "We think that a municipal employer is not disabled because it is an agency of the State from inquiring of its employees as to matters that may prove relevant to their fitness and suitability for the public service. Past conduct may well relate to present fitness; past loyalty may have a reasonable relationship to present and future trust. Both are commonly inquired into in determining fitness for both high and low positions in private industry and are not less relevant in public employment. The affidavit requirement is valid."

Thus relevance to fitness and suitability for the position held or sought marks the limits prescribed by this Court of the public employer's inquiry into the otherwise private affairs of its employees.

In the *Garner* case inquiry into advocacy of overthrow of the government by unlawful means and membership in the Communist Party was regarded to be relevant to the question of fitness or suitability to hold any position of municipal employment in the City of Los Angeles. There is no attempted distinction between its applicability to the street cleaners and to the Mayor. In *Adler* v.

Board of Education, 342 U.S. 485, a more homogeneous group of public employees was affected. There a state law providing for the disqualification and removal of public school teachers who advocate the overthrow of the government by unlawful means or who belong to organizations which have like purposes was held valid. The Court specifically rejected the suggestion that the decision in the *Garner* case should not be followed, and announced adherence to that case. In language squarely applicable to the cases at bar, the Court describes those aspects of the teaching profession which make relevant inquiry of its members that perhaps would not be so when directed to public employees charged with a less critical responsibility:

> "A teacher works in a sensitive area in a school room. There he shapes the attitude of young minds towards the society in which they live. In this, the state has a vital concern. It must preserve the integrity of the schools. That the school authorities have the right and the duty to screen the officials, teachers, and employees as to their fitness to maintain the integrity of the schools as a part of ordered society, cannot be doubted. One's associates, past and present, as well as one's conduct, may properly be considered in determining fitness and loyalty. From time immemorial, one's reputation has been determined in part by the company he keeps. In the employment of officials and teachers of the school system, the state may very properly inquire into the company they keep, and we know of no rule, constitutional or otherwise, that prevents the state, when determining the fitness and loyalty of such persons, from considering the organizations and persons with whom they associate."

The foregoing language of this Court goes straight to the heart of the question of the relevance of the information required by Act 10 to the suitability or fit-

ness of teachers for their positions. The public board charged with administering the schools is entitled, in fact is duty bound, to maintain for the school system both integrity and public respect. This it must do through an exercise of judgment which approaches soundness at a pace in direct ratio to the extent that it is enlightened by the facts concerning the individuals under consideration.

It should be remembered that unlike the ordinance in *Garner* and the statute in *Adler*, Act 10 is not a disqualifying enactment. It does not provide for the removal of anyone from any position. The information required by it is available equally to judge the fitness of employees for different assignments and promotions as it is to judge their fitness to teach at all. The interests, civic activities and perhaps specialized knowledge which membership in various organizations would tend to reveal are of no less interest to school authorities in determining which teacher is best prepared for advancement to a principal's position than is similar information to a private employer making a decision with regard to promoting one of his subordinates. Revelation of membership by the physical education instructor in historical societies could lead to better use of his talents and interests, and membership by the teacher of practical medicine for future homemakers in the Church of Christ Scientist might properly lead the governing board to make a teaching assignment for which it felt the teacher was better fitted.

Following *Adler* this Court decided *Wieman* v. *Updegraff*, 344 U.S. 183, invalidating an Oklahoma statute requiring a loyalty oath of all state officers and employees to the effect that they had not been members of any organization on the "Attorney General's List" within the five preceding years. The basis of conflict of this stat-

ute with the Fourteenth Amendment was that it created a conclusive presumption of disloyalty based on membership alone without regard to the knowledge of the person at the time of membership of the nature and purpose of the organization. This statute, like *Garner* and *Adler* but unlike Act 10, was a disquilifying enactment effecting the removal of public employees who would not, or could not, take the oath it prescribed.

Wieman is cited by appellants and petitioners along with *Sweezy* v. *New Hampshire*, 354 U.S. 234, in support of the general proposition that academic freedom is within the protection of the Constitution. We certainly have no quarrel with this concept.

The attack on Act 10 can draw no support from *Slochower* v. *Board of Education*, 350 U.S. 551, which held to violate due process a provision in the Charter of the City of New York requiring discharge of any city employee who invoked the privilege against self-incrimination to avoid answering questions relating to his official conduct. The privilege was invoked by a municipal college professor before a United States Senate Subcommittee and was employed to avoid giving information already possessed by municipal authorities. Again the distinction can be drawn that this statute, unlike Act 10, disqualified and required removal of the class of persons which it reached. However the fundamental consideration that distinguishes *Slochower* from the cases at bar is that there was no refusal there to furnish information to the public employer. The distinction is carefully defined by Mr. Justice Clark speaking for the majority as follows:

> "It is one thing for the city authorities themselves to inquire into Slochower's fitness, but quite another for his discharge to be based en-

> tirely on events occurring before a federal committee whose inquiry was announced as not directed at 'the property, affairs, or government of the city, or . . . official conduct of city employees'."

That *Slochower* prescribes no inhibtions against relevant inquiry by the public employer is reaffirmed in *Beilan* v. *Board of Education*, 357 U.S. 399. There this Court sustained dismissal of a pupblic school teacher under a Pennsylvania statute permitting such a discharge for "incompetency". The finding of incompetency was predicated on the teacher's refusal to answer a question of his superintendent as to his membership in the Communist Party. Listing, apparently with approval, the various disqualifying grounds contained in the Pennsylvania teacher tenure law and similar statutes of other states, the Court says:

> "We find no requirement in the Federal Constitution that a teacher's classroom conduct be the sole basis for determining his fitness. Fitness for teaching depends on a broad range of factors."

A classic example of activity distant from the school house which was properly considered to justify discharge of a public school teacher appears in *Horosko* v. *Mt. Pleasant Twp. School Dist.*, 335 Pa. 369, 6 A. 2d 866, and is discussed in the *Beilan* opinion. In the *Horosko* case the discharge was classified under the statutory ground of "incompetency" and was based on the teacher's after-hours activity in her husband's beer garden, serving as a bartender and waitress, and engaging in allied activities. The information required by Act 10 could well reveal similar activities by teachers inconsistent with the best interests of the school system. It does not seem too remote to suggest that it may be well known that Local Chapter 202 of the United Aesthetic Society is, in

fact, a place engaged principally in dispensing alcoholic beverages in violation of local laws, is frequented by prostitutes and is the site of regular brawls and disorders. Revelation of membership in this organization might well lead the public employer to reassess all relevant information as to the suitability and fitness of a teacher.

Appellants and petitioners seem to overlook the fundamental duty of frankness and candor with regard to his fitness for the position held or sought owed by any employee, public or private to his employer. That duty, as it rests on a public school teacher is described in *Beilan* in this language:

> "By engaging in teaching in the public schools, petitioner did not give up his right to freedom of belief, speech or association. He did, however, undertake obligations of frankness, candor and cooperation in answering inquiries made of him by his employing Board examining into his fitness to serve it as a public school teacher."

The failure to discharge this obligation resulted in the dismissal of a municipally employed subway conductor, a position considerably less demanding of responsibility than that of a teacher, and the public employer's action was approved by this Court in *Lerner* v. *Casey*, 357 U.S. 468. Lerner refused to answer a question put by his employer as to his membership in the Communist Party, and relied on the privilege against self-incrimination in his refusal. The Court points out that the discharge was grounded on a finding of doubtful trust and reliability based on Lerner's lack of frankness, and not on his invocation of the Fifth Amendment's protection.

Recognition of the obligations of candor resting on members of the teaching profession has not been limited to the courts, Congress, legislatures and public employers

alone. These obligations are generally recognized by the professional organizations of the teachers themselves as indicated by the following statement in 42 American Association of University Professors Bulletin 96:

> "As in all acts of association, the professor accepts conventions which become morally binding. Above all, he owes his colleagues in the university complete candor and perfect integrity, precluding any kind of clandestine or conspiratorial activities. He owes equal candor to the public. If he is called upon to answer for his convictions it is his duty as a citizen to speak out. It is even more definitely his duty as a professor. Refusal to do so, on whatever legal grounds, cannot fail to reflect upon a profession that claims for itself the fullest freedom to speak and the maximum protection of that freedom available in our society. In this respect, invocation of the Fifth Amendment places upon a professor a heavy burden of proof of his fitness to hold a teaching position and lays upon his university an obligation to reexamine his qualifications for membership in its society.
>
> ". . . When the powers of legislative inquiry are abused, the remedy does not lie in noncooperation or defiance; it is to be sought through the normal channels of informed public opinion."

This statement of position of the A.A.U.P. was adopted in 1953 and is quoted in the dissenting opinion in *Slochower*. A later statement appearing at 42 A.A.U.P. Bull. 49 (1956) reaffirms the position that lack of candor is relevant to fitness as a teacher in this language:

> "The fact that a faculty member has refused to disclose information to his own institution is relevant to the question of fitness to teach, but not decisive. . . . Nevertheless, members of the teaching profession should recognize that sincerity cannot be judged objectively and that a college

> or university is entitled to know the facts with which it must deal. This is especially true when a faculty member's activities, whether or not they are blameworthy, have resulted in publicity hurtful to his institution. Accordingly, in any proper inquiry by his institution, it is the duty of a faculty member to disclose facts concerning himself that are of legitimate concern to the institution, namely, those that relate to his fitness as a teacher . . ."

The disclosure required by Act 10 is attacked as impinging upon the rights secured by the due process clause of the Fourteenth Amendment. Against the background of the almost universally recognized duty of the public school teacher of candor and frankness to his institution's governing board can this requirement of disclosure be classified as inconsistent "with the fundamenta' principals of liberty and justice which lie at the base of all our civil and political institutions" as the scope of due process was defined in *Hebert* v. *Louisiana*, 272 U.S. 312, 316, or as "a practice repugnant to the conscience of mankind" as that language was employed in *Palko* v. *Connecticut*, 302 U.S. 319, 323? We submit that it cannot.

National Asso. for Advancement of Colored People v. *Alabama*, 357 U.S. 449, does not limit the power of a state to acquire information relevant to a legitimate governmental purpose. The holding there was merely to the effect that the membership lists which the Alabama Circuit Court ordered to be produced were not relevant to the issue then before that Court regarding whether the N.A.A.C.P.'s activities in Alabama had been such as to bring it within the scope of that State's foreign corporation registration statute. *Bates* v. *Little Rock*, 361 U.S. 516, turned on the same distinction. It was there held that there was "no relevant correlation between the power of the municipalities to impose occupation license

taxes and the compulsory disclosure and publication of membership lists of the local branches of the National Association for the Advnacement of Colored People." In order for these two cases to govern the disposition of the ones at bar it would be necessary for the Court to hold that the information required by Act 10 is wholly irrelevant to the proper administration of the public school system and the determination of fitness and suitability of teachers. Such a holding would be contrary not only to logic but also to the teachings of this Court in *Adler* and *Beilan*. Indeed, the relevance of the required information is so clear that the Supreme Court of Arkansas commented that "It cannot be doubted that the information would often be of real value to the employing school board." (*Carr* v. *Young*, ... Ark. ....., 331 S.W. 2d 701) and the three-judge District Court held that "We think that the information required by Act 10 is relevant." (*Shelton* v. *McKinley*, 174 F. Supp. 351.)

The real objection to Act 10 that underlies the arguments of both appellants and petitioners is the contention that its purpose is to expose membership in unpopular organizations. It has already been pointed out as a general proposition that the courts are without power to search for motives which prompted legislation, and *Barenblatt* v. *United States*, 360 U.S. 109, comes directly to grips with the specific matter of "exposure" as a legislative purpose. There the Court held that it was immaterial that the objective of the Congress and of its Committee in conducting an investigation might have been purely one of exposure. It was again pointed out that so long as the legislative branch acts in pursuance of its constitutional power, the judiciary lacks authority to intevene on the basis of the motives which spurred the exercise of that power.

Petitioners argue that the possibility that the information contained in the affidavits will not be kept confidential makes Act 10 unconstitutional. This is simply an argument that the statute could be put to an unconstitutional use. There are few statutes which cannot be administered in an improper manner. The remedy for that is to attack the objectionable administration if and when it occurs. The Supreme Court of Arkansas, in construing the statute held that "the permissible purpose of the statute is to enlighten the school board alone" and "that the affidavits need not be opened to public inspection". *Carr* v. *Young, supra.* Since the statute does not provide for public inspection of the affidavits, and since, as said by the Supreme Court of Arkansas, ". . . the proof does not show any inclination on the part of any school board to use Act 10 in a discriminatory manner", there is no proper occasion to speculate at this time with regard to possibilities of future abuses of the statute.

The suggestion by appellants that Act 115 of the Acts of Arkansas of 1959, adopted in February, 1959, and held unconstitutional by the court below in No. 14 in June, 1959, should in some way affect the constitutionality of Act 10 which was enacted at an entirely different session of the General Assembly in September, 1958, does not merit extensive rebuttal. It is unnecessary to consider the question of whether these two wholly unrelated Acts while concurrently in force would achieve an unconstitutional end. This question became moot when the District Court adjudged Act 115 to be invalid and unenforceable and no appeal was taken from that judgment. If Act 10 incurred a constitutional taint upon the advent of Act 115, it was removed by the eradication of Act 115.

We have not argued here the wisdom or the necessity of Act 10 because those questions are clearly beyond the competence of the courts to review. *Lerner* v. *Casey*, *supra*; *United Public Workers* v. *Mitchell*, *supra*. In the proper exercise of the judicial function, the courts must always abstain from passing on such questions as did the Court in *Atkins* v. *Kansas*, 191 U.S. 207, when, speaking through the earlier Mr. Justice Harlan, it said:

> "So, also, if it be said that a statute like the one before us is mischievous in its tendencies, the answer is that the responsibility therefor rests upon legislators, not upon the courts. No evils arising from such legislation could be more far-reaching than those that might come to our system of government if the judiciary, abandoning the sphere assigned to it by the fundamental law, should enter the domain of legislation, and, upon grounds merely of justice or reason or wisdom, annul statutes that had received the sanction of the people's representatives."

CONCLUSION

Wherefore, for the reasons hereinabove stated, the judgments of the District Court in No. 14 and of the Supreme Court of Arkansas in No. 83 should be affirmed.

Respectfully submitted,

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